IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO. 237 OF 2005

IN

FIRST APPEAL NO. 27 OF 2001

SMT. GANGA S. SAWANT AND ANR. ....Applicants

Versus

SMT. KAMALABAI S. TIRODKAR AND 17 ORS ....Respondents

Mr. S. K. Kakodkar, Senior Advocate with Mr. J. J. D'Souza, advocate for the applicants.
Mr. M. S. Sonak with Mr. D. Pangam, advocates for the respondents.

Coram:- S.S. PARKAR, J.

Date:- 4th August, 2005

P.C.

This application is filed for stay of the trial Court's Order which is challenged in appeal by the applicants who are claiming to be tenants in respect of the premises. The eviction proceedings were initiated against the appellants/defendants in the Civil Court on the ground that they are trespassers. That suit was decreed and the applicants were directed to deposit compensation at the rate of Rs.4,000/- per month from the year 1984. That decree and order passed by the trial Court is under appeal before this Court which appeal is admitted. The appeal is filed in the year 2001 and we are in the year 2005, when this application is filed for stay of the decree as the respondents-landlords have initiated execution proceedings against the applicants.

On behalf of the applicants, it is contended that the applicants are claiming tenancy rights and, therefore, they are liable to pay only standard rent in respect of the premises and not compensation at the rate of Rs.4,000/- per month, as decreed by the trial Court. No doubt, if the

applicants succeed in this Court and are held to be tenants then they will not be liable to pay compensation to the extent of Rs.4,000/- per month. The learned counsel appearing for the applicants states that the applicants were liable to pay rent of Rs.20/- per month and since the premises were demolished for the purpose of reconstruction they are entitled to be reinstated in the new premises and as per law liable to pay double the rent i.e. Rs.40/- per month.

On behalf of the respondents-landlords, two judgments of the Supreme Court have been cited, one in the case of "M/s. Mehta Teja Singh & Co. vs. Grindlays Bank Ltd." ([1982] 3 SCC 199) and the other in the case of "Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd." ([2005] 1 SCC 705). In the first case there a was a question about grant of stay of a money decree and the Apex Court had directed the respondent to deposit the balance of the decretal amount. In the second case where the question of grant of stay of eviction decree arose, the Supreme Court had directed the tenant to deposit the amount of rent as a condition precedent for grant of interim stay pending the hearing of the appeal.

In the present case, the applicants are claiming to be tenants. In case they are held to be tenants in the appeal, they will not be liable to pay the compensation at the rate of Rs.4,000/- per month as was decided by the trial Court. Moreover the appeal is pending in this Court for a period of four years. At this stage, it would not be desirable to pass the order of deposit of the amount which the applicants may not be in a position to deposit and thereby lose the right of appeal in this Court for non-deposit of the large amount @ Rs.4,000/- per month, which is stated to be due from the year 1984. In the facts and circumstances of the case, I feel that it would be in the interests of justice that the hearing of the appeal is fixed at an early date and, at the same time, the applicants are directed to deposit a sum of Rs. l,00,000/- (rupees one lakh only), though according to the applicants' counsel they are in arrears of hardly Rs.9,600/-.

In the circumstances, the application is allowed on condition that the applicants deposit a sum of Rs.l,00,000/- (rupees one lakh only) in this Court within four weeks from today. Since the applicants/appellants have to bring the heirs of respondents no.1 and 3 on record, as informed to

them by the respondents' counsel today in Court, the First Appeal no.27 of 2001 shall be posted for hearing in the first week after the October Vacation.

S.S. PARKAR, J.